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FOREIGN MARRIAGE AND DIVORCE LAWS.*

MARRIAGE AND DIVORCE IN FRANCE.

BY CHARLES G. LOEB, ESQ., COUNSELOR-AT-LAW, OF VALOIS & LOEB,
PARIS, FRANCE.

Marriage Contract in France.—It is only since the French Revolution that marriage is considered in France as essentially a civil contract. This principle, first established by the constitution of 1791 in France, has been consecrated ever since by the laws of this Republic, and the Penal Code at this day forbids any minister of any cult to give a marriage benediction to persons who have not previously justified to him that their marriage has been celebrated by the competent civil officers, that is to say by the Mayor of the Town or District in which one of the parties has resided for at least one month.

With the consent of their parents, a boy may marry after eighteen and a girl after fifteen years.

Before the age of twenty-one, however, neither boy or girl can marry without the consent of his father and mother. In case the parents disagree, the consent of the father suffices. Should the parents be deceased, the grandparents replace them.

Children who have attained the age of twenty-one, but have not yet reached thirty, must *justify* of the consent of their parents. This means that, should the consent not be obtained, it may be dispensed with provided certain formalities prescribed by the Code, called "*sommations respectueuses*" have been fulfilled. The person in this condition must serve upon the parents refusing to consent a summons in due form of law calling upon

*Because of the widespread dissatisfaction with our existing divorce laws and the odious comparisons drawn between them and the laws of other countries, we have decided to publish here the divorce laws of France, England and Germany, that it may be seen that we are not the only nation tolerating within our borders this "ever-increasing menace to the solidarity of the home."

them to agree to the wedding. Should the parents refuse, the marriage may take place nevertheless after thirty days from the service of this paper and will be perfectly valid in spite of the parents' dissention.

After the age of thirty, no consent of the parents is necessary.

The essence of the marriage contract in France is the consent of the parties.

The marriage must be preceded since the law of 1907 by the publication of bans. These bans are put up on the walls of the City Hall of the domicile of the parties ten days previous to the marriage of the parties and the act of marriage is transcribed on the margin of the birth records of each one of the parties in order to avoid bigamy.

The civil code in France renders valid all marriage in a foreign country between French citizens or between a French citizen and a foreigner, provided this marriage was celebrated in the legal forms in force where the marriage takes place, provided also that the marriage has been preceded by publication of bans, and provided also that all the conditions prescribed by the French Code as to age, consent of parents and publication of bans have been fulfilled.

The French law gives to foreigners marrying in France the full benefit and force of their "national law," that is to say that the legal age for marriage, the consent of their parents and the question of publication of bans at their domicile is left to their national law.

The marriage contract in France involves the following obligations:

The parties owe to each other mutually, fidelity, help and assistance; the husband promises to protect his wife and the wife promises to obey her husband (Art. 213, Civil Code France).

The wife must reside with her husband and must follow him wherever he decides to reside; the husband is obliged to receive his wife and to furnish her with all that is necessary according to his condition and to the best of his abilities.

Divorce in France.—Divorce was established in France in 1792.

The Civil Code of 1804 consecrated the principle of divorce,

but by the law of May 8th, 1816, after the downfall of the Napoleonic empire in France, divorce was suppressed. It was only in 1884 that the laws of France re-established marriage dissolution by divorce.

Under the Civil Code in force today in France, a divorce may be obtained upon either of the following causes:

First, adultery of the wife or of the husband.

Second, cruelty, physical injuries or grave insults.

Third, condemnation of one of the parties for infamous crime or felony.

The tendency of the French courts is at present towards the facilitating of the dissolution of the marriage contract.

The decisions are continually widening the scope of the causes designated as cruelty or grave insults.

Law decisions have held that letters containing insulting words from a husband to his wife, or reciprocally, constitutes grave injuries and were sufficient as a basis for a divorce.

To abandon the conjugal domicile, to refuse to consummate the marriage or to continue the marriage relations, to use any incorrect familiarities with third parties, to communicate dangerous sickness and many other causes have been held to constitute grave insults and to be sufficient causes for divorce.

Procedure.—Divorces are pronounced by the Civil Court in France. These judgments may be appealed from.

The procedure comprises:

First, an attempt to conciliate the parties by the President of the Court.

If this does not succeed, and the facts alleged are clearly proven, the divorce judgment is granted *de plano*.

If the facts are contestable and contested, the Court orders an investigation and each one of the parties may call forth witnesses.

The divorce may be either pronounced in favor of one of the parties or "*à leurs torts réciproques*," which means by the wrong doings of both.

There are two months for appeal after the rendering of the judgment. No appeal being taken, the divorce then becomes absolute, but has no effect or force until it is actually transcribed

on the books and registers of the City Hall in the margin of the marriage act. This last formality is essential.

A man may marry immediately after a divorce, but a woman must wait 300 days after the granting of the decree. This law has been made to avoid any question as to the paternity of a child born or conceived during the said period.

The French Court, by the judgment of divorce, dissolves absolutely the marriage contract and gives to each of the parties their entire liberty.

The courts may arrange in their judgment all property rights and questions between the parties and have power to grant alimony.

The question of the guardianship of the children is also settled in the judgment.

Divorces are becoming more and more frequent in France, specially in the largest cities. The courts are becoming more and more liberal in their interpretation of the laws of divorce and are extending, by interpretation, the scope of the causes prescribed by the code.

The law and the courts seem to be tending gradually and surely towards the simplest solution for matrimonial dissension: The divorce by mutual consent.

ENGLISH LAW OF MARRIAGE AND DIVORCE.

BY SYDNEY LEADER, ESQ., SOLICITOR OF THE ENGLISH SUPREME COURT, 76 NEWGATE STREET, LONDON, ENG., AND BERLIN.

English Law of Marriage.—Marriage is regarded as a contract in the ordinary sense and in addition is binding on minors in certain cases.

Marriageable age is for males 14, for females 12. If under 21 the consent of the parent or guardian is required, but its absence does not invalidate the marriage once performed.

It may be solemnized by religious ceremony or in purely civil form. If in the Church of England or certain other religious places of worship specially authorized the presence of the civil officer (the Superintendent Registrar), is unnecessary.

There are five methods of celebration :

(1) *Special License* of the Archbishop of Canterbury or his officer, enabling the parties to be married anywhere at any time within three months and no residence qualification is required. The cost is about £30 and it is rarely used.

(2) *Ordinary or common license* of the Bishop when one of the parties is resident within his diocese. An affidavit is required, that one of the parties has resided for 15 days in the parish of the Church where the marriage is to be solemnized, that is no legal impediment, and that necessary consents have been given if one or both parties are minors.

(3) *Bans* or public verbal notice of intended marriage announced in the parish churches where the parties reside for three Sundays before the marriage takes place.

(4) *Superintendent Registrars* certificate without license. Notice must be given at the Registrar's offices where the parties have resided for the seven previous days, and a declaration similar to that mentioned in (2) is required. The notice is published in the Registrar's office for 21 days and if no objection is lodged, the marriage may be performed at any time within three months at the Registrar's office or any licensed religious building.

(5) *Superintendent Registrar's certificate* without license. One party must have resided within the Registrar's District for 15 days before a certificate can be obtained. The ceremony can then be performed as in (4).

Except in the case of (1) all marriages must be performed between the hours of 8 a. m. and 3 p. m.

By the Deceased Wife's Sisters Marriage Act of 1907 the marriage of a man with his deceased wife's sister is now legal, the act being retrospective as regards previous marriages, and confirmed the legitimacy of the children of such marriages.

Generally, a defect in the essential formalities renders a marriage void, but non-residence or absence of consents do not invalidate it, only causing the offenders to be liable for penalties. Marriages with British subjects abroad, as also at sea on British ships, are governed by the Foreign Marriages Act, 1892.

Divorce.—Jurisdiction in Matrimonial Causes belongs to the Probate Divorce and Admiralty Division of the High Court of

Justice which has its seat in London. This Court assumed the old Ecclesiastical Courts in matrimonial affairs.

Certain of the Magistrates (Summary) Courts have a limited jurisdiction in the case of Separations and Protection orders.

The *principal decrees* of the Divorce Court are:

(a) *Divorce* or dissolution of marriage. A husband can obtain a divorce on account of the wife's adultery alone, and can obtain damages against the co-respondent; the petition of a wife must, in addition to adultery, prove cruelty or desertion unless, the misconduct is coupled with incest or other unnatural crimes. Offences must have occurred since the marriage.

Neglect or menaces do not amount to cruelty unless causing degradation and danger to health. Connivance, condonation or collusion are bars to a decree. Misconduct by the petitioner is usually, though not of necessity, a bar to relief.

(b) *Judicial separation* is granted to either party on the ground of adultery, cruelty, desertion, etc.

Upon the decree being made absolute the parties become separate entities, the wife becomes a feme sole and neither party can intermarry with another while they both live.

(c) *Nullity* is granted for certain essential defects such as a previous marriage to another person, or that it is within the prohibited degrees of relationship, want of marriageable age, mental incapacity, duress, defect of essential formalities, also on the ground of impotency, which must have existed at the time of the marriage.

A decree *nisi* is granted in the first instance and after a lapse of six months application is made for an order *absolute*. During this interval the "King's Proctor" may make inquiries, and may appear and oppose an absolute decree, or for good reason obtain rescission of the decree *nisi*.

Other remedies are: *Jactitation of marriage*, to put a stop to malicious boasts of a marriage not existing. *Restitution of Conjugal Rights*, a decree made when one party abandons the other, failure to obey which amounts to desertion sufficient to support a divorce or judicial separation. *Alimony* is granted to a wife pending the suit or after a decree and may vary at the discretion of the Court from one-fifth to one-half of the husband's income.

Marriage settlements may be varied by the Court after decree. Custody of the children is almost invariably, though not of necessity, given to the innocent party, the interests of the children being the chief consideration. The guilty party may by order be allowed occasional access to the children.

Costs, though usually paid by the husband in any event, may be enforced against the co-respondent or even against the guilty wife if she has a separate estate.

GERMAN LAW OF MARRIAGE AND DIVORCE.

BY LEADER, PLUNKETT & LEADER, ENGLISH SOLICITORS,
35 MARKGRAFEN STRASSE, BERLIN.

German Law of Marriage and Divorce.—The different matrimonial laws of the various States of the German Empire are now merged into the Imperial law as contained in the Civil Code.

Marriage is usually preceded by a marriage contract or betrothal (*Verlobniss*).

Marriageable age for a male is 21, and for females 16; if a man is specially declared of age he may marry after 18 with parental consent.

The marriage is *void*: if indispensable formalities are omitted; for consanguinity, including ascendants and descendants brothers and sisters of half blood, etc.; if being guilty parties in a divorce case, they have not obtained a dispensation; and in case of bigamy or incapacity. *Voidable*: for absence of proper consent; error as to person or personal attributes of other party; deception; duress; or return of spouse previously declared dead. There are also *hindering* impediments which do not affect the marriage once performed, viz: Age requirements not fulfilled; absence of parental consent. Consenting parties for marriage of minors are the father; if dead, the mother; and failing both, the guardian, or for adopted children, the adopting parents; for illegitimates, the mother, guardian or adopters. If such consents are withheld application may be made to the Court. Guardian and ward may not marry, and immoral relations with ascendants or descendants of the other party are hindrances, as also adoptive relationship, want of provision for children of previous mar-

riage, absence of superior's consent in case of certain officials, and military persons, absence of dispensation if ten months have not elapsed from termination of a woman's previous marriage, insufficient publication or incompetence of marriage officer.

Formalities.—Religious ceremonies have no legal effect nor can a priest be a marriage officer. After proper publication of intention to marry (*Aufgebot*) the parties appear before the Registrar (*Standesbeamter*) who declares them legally married and enters the marriage in the Register.

The competent registrar is usually that of the district of residence of the parties or one of them. Before the publication he satisfies himself as to all requirements, and production of birth certificates, etc., and consents where necessary. Publication by advertisement is then made in the domiciles of the parties. If residence or domicile of one of the parties is abroad notice must be advertised there, or a certificate produced from foreign authorities that there is no impediment. Such rules apply to all marriages in Germany and to marriages before German Consuls abroad.

Foreigners marrying in Germany must produce a legalized certificate that there is no impediment to their marriage.

The effect of marriage on the property of the parties may be (a) *Statutory* or (b) *Contractual*. If the former, the husband takes complete control of the wife's property except that which is personal and privileged (Civil Code 1365-1372) but is liable for waste and the wife in such case may request the intervention of the Court.

If the latter (b), it is arranged before a notary who protocols the contract. If both parties are Germans and abroad, a consul acts as notary. Such contracts usually provide for either general community of goods; separation of goods; community of income; or community of moveables.

Divorce is regulated by the Civil Code and the Code of Civil Procedure. There is no ecclesiastical jurisdiction. The law governing is usually that of the husband's country. The procedure slightly differs from that of Civil suits and the Competent Courts are in first instance *Landesgericht* (High Court), then *Oberlandesgericht* (Appeal Court), and finally *Reichsgericht* (Imperial Court).

The Court is bound to make an effort at reconciliation and judgment in default cannot be obtained; the defendant's admissions are not evidence.

Principal decrees are (a) *divorce* or dissolution (b) *judicial separation*; the latter is granted for precisely the same reasons as the former and has all the same effects except that neither party may marry another and they may at any time resume cohabitation, or before doing so extend the decree to dissolution.

Causes for a decree are:

a. Adultery and other unnatural vices. The adulterer may be punished at the instance of an innocent party;

b. Attempts against petitioner's life;

c. Desertion, i. e., refusal for one year to obey order to restore conjugal rights, refusal for one year to cohabit, going abroad where communication is impossible or difficult without consent;

d. Insanity for 3 years, declared incurable;

e. Gross neglect, e. g., inflicting injury, immoral or dishonorable life, etc.

Insuperable aversion is no longer a cause.

Costs vary according to the means of the parties and their estate, etc., and may range from £15 to £500 or more. The Court must state in its judgment which is the guilty party or if they are both guilty.

The custody of children go to the innocent party; if both are guilty, the father is entitled to the boys when they are six years old, but a Guardianship Court has full discretion.

—*The Lawyer and Banker*, Oct., 1912.